



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/423,523      | 07/05/2000  | KIYOTAKA ISHINO      | ATOCM163            | 6838             |

23599 7590 08/26/2004  
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
2200 CLARENDON BLVD.  
SUITE 1400  
ARLINGTON, VA 22201

EXAMINER

SERGEANT, RABON A

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1711

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

**MAILED**

AUG 26 2004

**GROUP 1700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/423,523

Filing Date: July 05, 2000

Appellant(s): ISHINO ET AL.

\_\_\_\_\_  
Harry B. Shubin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed May 24, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 4-9 and 12-15 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

|                |         |        |
|----------------|---------|--------|
| U.S. 4,047,327 | Tesch   | 9-1977 |
| U.S. 5,506,024 | Flesher | 4-1996 |

|                |                  |        |
|----------------|------------------|--------|
| U.S. 5,660,887 | Werenicz et al.  | 8-1997 |
| WO 96/15174    | Warzelhan et al. | 5-1996 |

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-9 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flesher ('024) or Werenicz et al. ('887) or WO 96/15174, each in view of Tesch ('327).

The primary references disclose the production of water vapor permeable films, considered to possess appellants' claimed gas permeabilities. Contrary to appellants' argument within page 6 of the Appeal Brief, Werenicz et al. and WO 96/151174 disclose water vapor permeable block polyether polymers considered to meet the claimed polyether chain containing polymers of claims 5 and 15, and Flesher discloses polyether block amides considered to meet the water vapor permeable polymers of claims 4-9 and 12-15. However, these references are silent regarding the use of the films as covers for compost heaps. As discussed within appellants' Background of the Invention and Tesch, the use of covers over compost heaps to prevent undue interference from weather conditions has long been known. Furthermore, Tesch discloses that films suitable for use as covers over compost can be tailored or modified to control such conditions as oxygen or air permeability. See column 6, lines 43+. Though Tesch advises, but does not necessarily require, that slits within the film be used to control these conditions

(column 4, line 59), the reference is considered to emphasize the concept of the sheet permitting gas exchange and the beneficial properties conveyed by such gas exchange. Appellants have argued that one looking to the teachings of Tesch would be motivated to control the environment of the compost solely by slitting the films; however, this argument fails to appreciate the advances in gas permeable films, as taught by the primary references. The position is taken that one of ordinary skill in the art would have fully realized that the gas exchange sought by Tesch can be achieved by the use of the permeable films taught by the primary references, without the need for slitting the films. Therefore, the position is further taken, in view of the art recognized need to both protect compost piles from the elements and to control the environment of the compost, that it would have been obvious to utilize gas permeable films, such as those disclosed by the primary references, as protecting covers for compost heaps.

Appellants have amended the claims to indicate that the film is water impermeable. While this limitation is somewhat ambiguous, it is noted that the films of the primary references also possess the characteristic of being impermeable to liquid water. Therefore, it is not seen that this limitation distinguishes the instant claims from the prior art. The examiner has also considered appellants' argument that the references constitute non-analogous art. However, the position is taken that the primary and secondary references are analogous art in that the respective references are concerned with the utilization of polymeric materials having gas exchange properties that are suitable for protection from the elements.

**(11) Response to Argument**

Appellants' arguments have been addressed within the *Grounds of Rejection*.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1711

Respectfully submitted,



Rabon Sergent  
Primary Examiner  
Art Unit 1711

R. Sergent  
August 23, 2004

Conferees:

Supervisory Patent Examiner James Seidleck



Supervisory Patent Examiner David Wu



MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
2200 CLARENDON BLVD.  
SUITE 1400  
ARLINGTON, VA 22201